IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 155 OF 2001.

Communidade of Saligao,
with Office at Saligao,
Bardez, Goa,
Through its Attorney,
Mr. Michael D'Souza,
residing at House No.3/23A (New),
Muddavaddo, P.O. Saligao,
Bardez, Goa. .... Appellant.

Versus

Addl. Deputy Collector & L.A.O.,
Mapusa Sub Division,
Mapusa, Bardez, Goa. .... Respondent.

Shri S.M. Singbal, Advocate for the Appellant.

Ms. W. Coutinho, Government Advocate for the Respondent.

CORAM: A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Judgment: 18.04.2005.
Date of pronouncing the Judgment: 03.05.2005

J U D G M E N T: (PER BRITTO, J.)

This appeal is by the unsuccessful applicant in L.A.C. No.91/1992 and is filed against the Judgment/Award dated 27.12.2000 by which the Applicant's reference for enhancement of compensation for the acquired land has been rejected.

2. Briefly stated, by virtue of Notification dated 6.3.91 issued under Section 4(1) of the Land Acquisition Act, 1894 and published on the Gazette dated 7.3.91 the Government acquired 9650 sq.m. of Survey No.115 and 49750 sq.m. of Survey No.116 of Saligao village, belonging to the applicant for the purpose of setting up the State Remote Sensing Centre at Saligao by Award dated 10.3.92 the L.A.O. fixed compensation payable for the said acquisition at the rate of Rs.14.21 per sq.m.

3. Dissatisfied with the amount awarded by the L.A.O., the applicant sought a reference made to the District Court and in the said reference sought enhancement at the rate of Rs.100/- per sq.m. and in support of the case for enhancement, the applicant examined its Attorney and produced two sale deeds, one dated 20.11.82 by which a plot of land admeasuring 360 sq.m. was sold at the rate of Rs.97/- per sq.m. and other dated 10.2.89 by which a plot of 25 sq.m. was sold at the rate of Rs.88/- per sq.m. and in support of this last sale deed, the applicant examined AW.2 Evaristo Fernandes.

4. The learned Addl. District Judge, Mapusa (Reference Court) observed, and in our view, rightly that the applicant's land was a barren type rocky land which could be developed for housing purpose, but wrongly observed, as far as the first sale deed is concerned, that the

applicant was not able to prove it as per the Guidelines of the Supreme Court. As far as the second sale deed is concerned, the learned Reference Court again wrongly observed that it was in respect of a small plot of land and the same could not be a reasonable basis to determine the market value of a large extent of land. As far as the first sale deed is concerned, it was held by the Supreme Court in the case of ***State of Haryana v. Ram Singh (2001 (4) Scale 527)*** that it is not the law that a certified copy of a registered agreement for sale is inadmissible in evidence unless the parties to the document are examined to prove it since that would be contrary to Section 51A of the Land Acquisition Act, 1894. The Supreme Court had further stated that a certified copy of a registered sale deed was admissible in evidence and did not require to be proved by calling a witness. The learned Reference Court therefore was not right in not taking the first sale deed into consideration for the purpose of fixing the market value of the acquired land on a specious plea that it was not proved as per the Guidelines of the Supreme Court. As far as the second sale deed is concerned, no doubt that it was of a very very small plot of land, but here again the learned Reference Court appears to have gone wrong because it was of the view that sale of small extent of land cannot form the basis for fixing compensation for the acquired land. In the case of ***Lila Ghosh (Smt) (dead) through L.R. v. State of W.B. [(2004) 9 S.C.C. 337]*** it has been stated that the normal

rule is that if a plot is large then there must be depreciation for largeness and large plots always fetch less than small plots. In our view, it is not that a small plot can never form the basis for fixing compensation for the acquired land.

5. Shri Singbal, the learned counsel on behalf of the appellant-applicant had placed reliance on the case of ***Spl. Tehsildar, Land Acqn. Vishakapatnam v. Smt. A. Mangala Gowri (A.I.R. 1992 S.C. 666)*** and has submitted that by taking a deduction of 1/3 market value of the acquired land could be fixed. Shri Singbal has also placed reliance on the case of ***L.A.O. and Mandal Revenue Officer v. V. Narasaiah,*** wherein the Hon'ble Supreme Court speaking through its three learned Judges has affirmed the principle that a sale deed can be relied upon without examining the vendee or vendor or anybody else connected with the sale deed.

6. On the other hand, Ms. Coutinho, the learned Government Advocate, has placed reliance on the case of ***Dy. Collector (Dev) & Land Acquisition Officer, Panaji v. Vithal Biku Patekar (1998 (2) Goa L.T. 474)*** and has submitted that the nature and situation and other amenities as regards the plots of sale deeds in relation to the acquired land are also required to be seen. She has further submitted that if a sale deed of a

small plot is to be used as a basis then necessary depreciation has to be taken and has placed reliance on the said case of Lila Ghosh (Supra).

7. We have already indicated the law laid down by the Supreme Court which was not correctly understood by the learned Reference Court. We are of the view that the Judgment/Award of the learned Reference Court deserves to be set aside and the case remanded to the learned Reference Court to decide the same afresh in the light of the law indicated hereinabove. We are not inclined to assess the compensation payable to the applicant also because it is seen from the Award of the Land Acquisition Officer that as far as Survey No.115 is concerned, there was a claim of tenancy put forward by Atmaram R. Parulekar and as far as Survey No.116 was concerned there was a claim of tenancy put forward by Chandrakant V. Govekar. The Award also shows that on account of the said dispute, the apportionment of compensation was referred to by him to the District Court, Panaji under S.31(2) of the Land Acquisition Act, 1894. We fail to understand as to how there was so much silence on that aspect from the learned pleaders appearing before this Court as well as the Reference Court. Shri Singbal now informs that the said claims of tenancies have been rejected by the Mamlatdar and at present revision applications are pending before the Administrative Tribunal. Any claim of tenancy in respect of the acquired land is bound

to affect its marketability as land having building potential since on account of very many laws in force in this State, tenanted land cannot be put to any other use except for agriculture. In our view the applicant would be entitled for higher compensation only in the event the said claims of tenancy raised by the said Parulekar and Govekar fail. We are of the view that this reference for enhancement should be decided by the Reference Court only after the revision applications are decided by the Administrative Tribunal.

8. With the above observations, we allow the appeal and set aside the Judgment/Award of the learned Reference Court and remand the case for a fresh decision in the light of what has been stated hereinabove.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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